That a city does not hold such contracts strictly in trust for the special class to be benefited is shown by the fact that though the abutting owners have a right of action if the city permits defective construction, yet if the work has been completed and payment made the right of action is gone. *Schumm* v. *Seymour*, 24 N. J. Eq. 143; *Liebstein* v. *Mayor*, *ibid.* 200. It seems clear that the Kentucky court too was of this opinion, as it held that the cause of action accrued, not when the surety was released, but when the extra assessment was paid. The city furthermore cannot justly be said to be an agent, because the so-called principals have no control in the matter. Yet undoubtedly a fiduciary relationship of some sort does exist, as is indicated by the fact that a city, by way of mere gift, cannot release a debtor to the detriment of any tax-payer. *Wells* v. *Putnam*, 169 Mass. 226; see 16 HARV. L. REV. 211. The court considered that the city was exercising a "statutory power of attorney"; but it is a little odd to find the power granted by the attorney and not by the principal.

Technically the case may be worked out thus. At the outset the council has full legislative discretion to determine whether an improvement is advisable. But when that discretion has been exercised and the contracts have been made, a duty, ministerial in its nature, arises to have the betterment properly executed. If the cost is fraudulently increased the abutters need pay only the fair value of the work done. *Matter of Livingston*, 121 N. Y. 94. The same is true in the case of gross negligence. *Matter of Anderson*, 109 N. Y. 554. In the principal case to release the solvent surety was not a legislative or discretionary act, because the council made no pretence of determining that the paving should be abandoned altogether. It was in fact a ministerial tort causing damage to the abutters; and the latter should recover under the general rule of liability for torts committed by municipal agents in the execution of ministerial duties. See 2 DILL. MUN. CORP., § 980.

NATURE OF INSURANCE CONTRACTS. — A policy insuring property is generally asserted to be a contract for the personal indemnity of the insured. See 1 MAY, INS., § 6. There is a tendency, however, to depart from this proposition, and an illustration of it may be seen in a recent South Carolina case. Property had been insured by a grantee under a voluntary conveyance which later at the suit of the grantor's creditors was declared fraudulent. After a loss all the parties appeared before the court and the proceeds of the policy, in amount equalling the actual damage to the property, were given to the grantee under the fraudulent conveyance. *Steinmeyer* v. *Steinmeyer*, 42 S. E. Rep. 184. The court professed to base its decision on the general principle, reasoning that the creditors could not reach the proceeds since they resulted from the personal contract for indemnity between the company and the grantee. *Cf. Forrester* v. *Gill*, 11 Col. App. 410; *Bernheim* v. *Beer*, 56 Miss. 149. But in emphasizing the personal nature of the insurance contract the court slighted the other essential characteristic, indemnity. Only by a fiction can the damage to the grantee be regarded as more than nominal, and hence in allowing him substantial damages the decision clearly departs from the rule which it professedly adopts.

The departure in other classes of cases takes a contrary direction, and disregards the personal element for the sake of indemnifying the actual sufferer. Where a grantee of a conveyance constructively fraudulent as against the

grantor had insured, it was held that the proceeds of the policy should go to the defrauded grantor, since he in equity was entitled to the property. *Bath, etc., Paper Co.* v. *Langley*, 23 S. C. 129. Again, in cases where a loss occurs on land which is the subject of an executory contract of sale, the prevailing view in America is that the vendee is entitled to the proceeds of a policy procured by the vendor. *Skinner, etc., Co.* v. *Houghton*, 92 Md. 68; *contra, King* v. *Preston*, 11 La. Ann. 95. In both of these instances a contractual relation is lacking between the company and the party ultimately receiving the proceeds.

The disinclination of the courts to relieve insurance companies from liability through a seeming technicality doubtless explains why the integrity of the general rule is not preserved; and where the proceeds are given to the person actually damaged substantial justice seems often attained. Since the company's liability, however, must be found in its contract, this desirable result can be reached only by adopting a broad though somewhat forced rule of construction, that *prima facie* the company contracts to indemnify not only the person taking out the policy but any other party beneficially interested at the time of loss. The view of the principal case, on the other hand, appears insupportable on any ground. It violates the terms of the policy by giving damages to one not damnified in a case where that result is not justified by reasons of substantial justice.

De Facto Corporations. — A state of facts which tests current definitions of *de facto* corporations was recently presented to the South Dakota courts. An attempt had been made to organize a banking corporation at a time when there was no statute authorizing it. Later the necessary statute was passed, but the bank, which had meanwhile held itself out as incorporated, took no steps to comply with the law. In actions involving the question of the bank's status the court, while denying the existence of any estoppel, rested its decisions on the ground that the bank was a *de facto* corporation. *State* v. *Stevens*, 92 N. W. Rep. 420, and *Mason* v. *Stevens*, *ibid.* 424.

The doctrine of *de facto* corporations is often said to be founded on estoppel. *Snyder* v. *Studebaker*, 19 Ind. 462. But it covers cases where there can be no estoppel, and is to be rested most satisfactorily on grounds of public convenience and business necessity. See *Society Perun* v. *Cleveland*, 43 Oh. St. 481; 36 Am. L. Reg. N. S. 18, 21. These reasons, however, apply with greater or less force in every case of pretended incorporation, and it is obviously necessary to restrain the unauthorized assumption of corporate powers by requiring more than proof of mere user before recognizing corporate existence *de facto*. The principle that the state is the sole source of corporate power is fundamental. The existence of a law under which the corporation might be created is therefore essential, for otherwise the claim of corporate existence is not only entirely unauthorized, but is against the implied prohibition of the state. Certain frequently quoted definitions have included only those two elements — the user of assumed corporate powers, and the statute. See *Methodist Church* v. *Pickett*, 19 N. Y. 482. The better decisions, however, require, as a third element, a *bona fide* attempt to organize under the statute. See *Finnegan* v. *Noerenberg*, 52 Minn. 239; *McLennan* v. *Hopkins*, 2 Kan. App. 260, 265. The principal case fulfills